

APPLICANTS:
Christopher and Deborah Maydak

REQUEST: A variance to allow a
retaining wall within the recorded easement

HEARING DATE: June 9, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5423

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Christopher and Deborah Maydak

LOCATION: 1603 Bridewells Court, Gunpowder subdivision, Joppa
Tax Map: 64 / Grid: 1F / Parcel: 291 / Lot: 49
First Election District

ZONING: R1 / Urban Residential District/Conventional with Open Space

REQUEST: A variance, pursuant to Section 267-26C(6) of the Harford County Code
to allow a retaining wall within the recorded easement.

TESTIMONY AND EVIDENCE OF RECORD:

Christopher Maydak, Applicant, is requesting a variance to construct a retaining wall across the rear of his property. Mr. Maydak testified that the variance is made necessary because the rear of his property is encumbered by an existing 10 foot by 8 foot drainage and utility easement.

Mr. Maydak indicated that his lot slopes steeply downwards and to its rear lot line. As a result the space which is usable by his children is highly constricted. The construction of a retaining wall across the rear of his property would help create an increased area of level play surface, both on the house side and on the rear lot line side of the proposed retaining wall.

The proposed retaining wall, according to the application, would not exceed 4 feet in height at any location, would be about 120 feet long, and constructed of 6 inch by 6 inch by 12 inch pressure-treated #2 timbers with tiebacks every 12 feet. There would be appropriate gravel and perforated drain pipe at the bottom for drainage.

Mr. Maydak testified that the retaining wall would impact the existing drainage and utility easement by no more than 5 feet, and would impact no existing structures. He also feels that the retaining wall would help with the safety of his children and others using the backyard as it would alleviate the existing sharp elevation change.

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Mr. Maydak explained that as originally proposed the retaining wall was found to be too close to the existing storm drain and accordingly the Harford County Department of Public Works asked him to relocate the wall as shown on Attachment 11 and 12 to the Harford County Department of Planning and Zoning Staff Report. Mr. Maydak indicated that he understood Attachment 12 showed the acceptable location, and agreed to amend his request to seek permission to construct the retaining wall as shown on Attachment 12.

Mr. Maydak explained that he had discussed the proposed wall with his neighbors, and none had any objection. Mr. Maydak feels the proposed variance, if granted, would have no adverse impact to the neighbors or neighborhood, and would in fact be beneficial to the neighborhood.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune indicated that this property is unique because of its grade and the existence of the utility easement. An existing storm drain crosses only a small corner of the subject property. It is located mainly off the lot. Mr. McClune emphasized that the Department of Public Works had found Mr. Maydak's initial location of the retaining wall to be unacceptable. The approved location is shown on Attachment 12 to the Staff Report, which is the only location for which the staff is recommending approval.

Mr. McClune feels there is no need for landscaping or any other type of buffering. It would, in fact, be best to construct as few improvements or plantings within the easement area as possible.

No opponents testified in opposition.

APPLICABLE LAW:

The Applicants are requesting a variance to Section 267-26C(6) of the Harford County Code which states:

“(6) No accessory use or structure, except fences shall be located within any recorded easement area.”

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

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- (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval."*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property has a backyard which slopes sharply to its back property line. The rear of the subject property is also encumbered by a drainage and utility easement which contains only at its outermost corner an actual storm drain improvement. The nature of the topography, together with the existence of the drainage and utility easement, cause the Applicants practical difficulty in that they are unable to fully utilize their back yard for normal family purposes. The Applicants propose a small retaining wall to help create a more useable surface. That proposal appears to be the minimum variance necessary in order to alleviate the hardship.

It is found that there would be no adverse impact to any of the neighboring properties if the requested variance were granted.

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CONCLUSION:

For the above reasons it is recommended that the requested variance be approved, subject to the following:

1. That the retaining wall be built as indicated in red on Attachment 12 to the Harford County Department of Planning and Zoning Staff Report.
2. The Applicants shall obtain all necessary permits and inspections for the retaining wall.
3. The Applicants shall comply with the Harford County Department of Planning and Zoning memo dated December 1, 2003, which incorporates and references Attachment 12.

Date: June 28, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner